

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NORMAN BLAGMAN, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

APPLE INC., AMAZON.COM, INC., GOOGLE INC.,  
MICROSOFT CORPORATION, EMUSIC.COM INC.,  
THE ORCHARD ENTERPRISES, INC., ORCHARD  
ENTERPRISES NY, INC.,

And John Does 1-10, persons and entities whose  
identities are unknown to Plaintiff but who have  
performed and participated in the unlawful acts alleged  
herein,

Defendants.

Civil Action No.  
1:12-CV-5453 (ALC) (JCF)

**GOOGLE INC.'S ANSWER TO SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant Google Inc. ("Google") answers the Second Amended Class Action Complaint ("Complaint") filed by Plaintiff Norman Blagman ("Plaintiff"), as follows:

**GENERAL DENIAL**

Except as otherwise expressly admitted herein, Google denies each and every allegation set forth in the Complaint, including, without limitation, any allegations contained in the preamble, headings, subheadings or footnotes of, or exhibits to, the Complaint, and specifically denies any liability to Plaintiff. Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, allegations in the Complaint to which no responsive pleading is required shall be deemed as denied. Google expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary, including the right to assert and rely upon any additional defenses as may be discovered.

**RESPONSE TO SPECIFIC ALLEGATIONS**

AND NOW, incorporating the foregoing, Google states as follows in response to the specific allegations in the Complaint:

**Introduction**

1. Google denies the allegations in Paragraph 1, except to admit that Plaintiff purports to describe the nature of this action. Google states that it lacks sufficient information and knowledge to form a belief as to the truth of the allegations relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 1 state conclusions of law to which no answer is required.

2. Google admits that Plaintiff purports to bring an action individually and on behalf of others who are similarly situated, but denies every other allegation of Paragraph 2, except to the extent that any such allegation constitutes a conclusion of law to which no answer is required.

3. Google lacks sufficient information and knowledge to form a belief as to the truth of the allegations in Paragraph 3 relating to any other defendant and therefore denies those allegations. Google denies every other allegation set forth in Paragraph 3 of the Complaint, except Google admits that it operates a digital music retail store. To the extent that any such allegation constitutes a conclusion of law to which no answer is required.

4. Google lacks sufficient information and knowledge to form a belief as to the truth of the allegations in Paragraph 4 relating to any other defendant or third party and therefore denies those allegations. Google denies all other allegations in Paragraph 4, except to the extent that any such allegation constitutes a conclusion of law to which no answer is required.

5. The allegations in Paragraph 5 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 5 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 5 relating to any other defendant and therefore denies those allegations.

6. The allegations in Paragraph 6 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 6 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 6 relating to any other defendant and therefore denies those allegations.

7. The allegations in Paragraph 7 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 7 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 7 relating to any other defendant and therefore denies those allegations.

8. The allegations in Paragraph 8 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 8 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 8 relating to any other defendant and therefore denies those allegations.

9. The allegations in Paragraph 9 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 9 that relate to Google, except Google admits that it receives a portion of proceeds

from sales on Google Play. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 9 relating to any other defendant and therefore denies those allegations.

10. The allegations in Paragraph 10 state legal conclusions and opinions to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 10 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 10 relating to any other defendant and therefore denies those allegations.

11. The allegations in Paragraph 11 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 11 that relate to Google. Google further states that it lacks sufficient information and knowledge to form a belief as to the truth of the allegations in Paragraph 11 relating to any other defendant or Plaintiff or the musical compositions allegedly owned and controlled by Plaintiff, and therefore denies those allegations.

12. The allegations in Paragraph 12 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 12, except admits that Plaintiff purports to seek the relief as stated in Paragraph 12. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 12 relating to any other defendant and therefore denies those allegations.

#### **Jurisdiction and Venue**

13. Paragraph 13 contains only conclusions of law to which no answer is required.

14. Google admits for the purposes of this action that it has engaged in business activities in the State of New York and within this judicial district. Google further states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 relating to any other defendant and therefore denies those allegations.

15. Paragraph 15 contains only conclusions of law to which no answer is required. To the extent that a response is deemed required, Google denies that it has committed unlawful acts. Google further states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 relating to any other defendant and therefore denies those allegations.

**Norman Blagman**

16. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies those allegations.

17. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies those allegations.

**Defendants**

18. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies those allegations, except that Google admits, upon information and belief, that the iTunes Store is owned by Apple.

19. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies those allegations, except that Google admits, upon information and belief, that Amazon MP3 is a digital music store owned by Amazon.

20. Admitted.

21. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies those allegations, except that Google admits, upon information and belief, that Zune and Xbox Music are digital music stores owned by Microsoft.

22. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and therefore denies those allegations, except that Google admits, upon information and belief, that emusic.com is a digital music store owned by eMusic.

23. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and therefore denies those allegations.

24. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies those allegations.

25. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and therefore denies those allegations, except that Google admits, upon information and belief, that Orchard distributes digital music through internet based retailers, including Google Play.

26. Paragraph 26 contains conclusions of law to which no answer is required. To the extent that a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and therefore denies those allegations.

#### **The Subject Compositions**

27. Paragraph 27 contains conclusions of law to which no answer is required. To the extent that a response is deemed required, Google denies the allegations in paragraph 27 that

relate to Google. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

***The Prowl***

28. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 28 and therefore denies those allegations. Google further states that the allegations in Paragraph 28 state legal conclusions to which no response is required.

29. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 29 and therefore denies those allegations. Google further states that the allegations in Paragraph 29 state legal conclusions to which no response is required.

30. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 30 and therefore denies those allegations. Google further states that the allegations in Paragraph 30 state legal conclusions to which no response is required.

31. The allegations in Paragraph 31 identify exhibits to the Complaint and therefore no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

32. The allegations in Paragraph 32 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

***Jazz Is His Old Lady And My Old Man***

33. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 and therefore denies those allegations.

34. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 34 of the Complaint and therefore denies those allegations. Google further states that the allegations in Paragraph 34 state legal conclusions to which no response is required.

35. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Complaint and therefore denies those allegations. Google further states that the allegations in Paragraph 35 state legal conclusions to which no response is required.

36. The allegations in Paragraph 36 identify exhibits to the Complaint and therefore no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies those allegations.

37. The allegations in Paragraph 37 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 37 and therefore denies those allegations.

***It'll Never Be Over For Me***

38. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 38 of the Complaint and therefore denies those allegations.



39. The allegations in Paragraph 39 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 39 and therefore denies those allegations.

40. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 40 and therefore denies those allegations. Google further states that the allegations in Paragraph 40 state legal conclusions to which no response is required.

41. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 and therefore denies those allegations. To the extent that the allegations in Paragraph 41 identify exhibits to the Complaint, no response is required. Google further states that the allegations in Paragraph 41 state legal conclusions to which no response is required.

42. The allegations in Paragraph 42 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 42 and therefore denies those allegations.

43. The allegations in Paragraph 43 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 43 and therefore denies those allegations.

44. The allegations in Paragraph 44 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge or information

sufficient to form a belief as to the truth of the allegations set forth in Paragraph 44 of the Complaint and therefore denies those allegations.

45. The allegations in Paragraph 45 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 45 and therefore denies those allegations.

**Infringement of the Subject Compositions**

46. Google denies the allegations in Paragraph 46 that relate to Google, except to admit that Google has offered through Google Play the digital phonorecord delivery of certain sound recordings embodying the nondramatic musical works entitled “Prowl,” “Jazz Is His Old Lady & My Old Man,” and “It’ll Never Be Over for Me” in certain record albums set forth in Exhibit F to the Complaint. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 46 relating to any other defendant and therefore denies those allegations.

47. The allegations in Paragraph 47 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 47 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 47 relating to any other defendant or third party and therefore denies those allegations.

48. The allegations in Paragraph 48 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 48 that relate to Google. Google further states that it lacks sufficient knowledge and

information to form a belief as to the truth of the allegations in Paragraph 48 relating to any other defendant or third party, and therefore denies those allegations.

49. The allegations in Paragraph 49 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 49 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 49 relating to any other defendant or third party, and therefore denies those allegations.

50. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 50 and therefore denies those allegations, except that Google admits that Orchard has entered into agreements with Google authorizing Google to offer through Google Play the digital phonorecord delivery of certain sound recordings of nondramatic musical works.

51. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 51 and therefore denies those allegations.

52. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 52 and therefore denies those allegations.

53. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 53 and therefore denies those allegations.

54. The allegations in Paragraph 54 identify an exhibit to the Complaint and therefore no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 54 and therefore denies those allegations.

55. The allegations in Paragraph 55 identify an exhibit to the Complaint and therefore no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 55 and therefore denies those allegations.

56. The allegations in Paragraph 56 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 56 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 56 relating to any other defendant and therefore denies those allegations.

#### **Class Allegations**

57. The allegations in Paragraph 57 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 57 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 57 relating to any other defendant and therefore denies those allegations.

58. Google denies the allegations in Paragraph 58, except to admit that Plaintiff purports to bring this action as alleged in Paragraph 58. Google denies that the requisites for class action treatment are present.

59. The allegations in Paragraph 59 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies the allegations. Google denies that the requisites for class treatment are present.

60. The allegations in Paragraph 60 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 60, and denies that the requisites for class treatment are present.

61. The allegations in Paragraph 61 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 61, and denies that the requisites for class treatment are present. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 61 relating to any other defendant and therefore denies those allegations.

62. The allegations in Paragraph 62 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 62 and therefore denies those allegations. Google denies that the requisites for class treatment are present.

63. The allegations in Paragraph 63 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 63, and denies that the requisites for class treatment are present.

64. The allegations in Paragraph 64 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 64, and denies that the requisites for class treatment are present. Google lacks sufficient knowledge and information to form a belief as to the truth of what Plaintiff anticipates.

#### **Mechanical Licenses**

65. The allegations in Paragraph 65 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient

knowledge and information to form a belief as to the truth of the allegations in Paragraph 65 and therefore denies those allegations. Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

66. The allegations in Paragraph 66 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 66, and refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

67. The allegations in Paragraph 67 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 67, and refers to the applicable provision(s) for the complete and accurate contents thereof.

68. The allegations in Paragraph 68 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google states lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 and therefore denies those allegations. Google further refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

#### ***Negotiated Mechanical Licenses***

69. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69 and therefore denies those allegations, except to admit upon information and belief that there are a number of entities providing mechanical licensing services. Google further refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

70. Google denies the allegations in Paragraph 70, except to admit that Rights Flow was an entity that provided mechanical licensing services prior to acquisition by Google.

***Compulsory Mechanical Licenses***

71. The allegations in Paragraph 71 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

72. The allegations in Paragraph 72 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

73. The allegations in Paragraph 73 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) and authorities for the complete and accurate contents thereof.

74. The allegations in Paragraph 74 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

75. The allegations in Paragraph 75 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 75 and therefore denies those allegations. Google further refers to the applicable statutory provision(s) and authorities for the complete and accurate contents thereof.

76. The allegations in Paragraph 76 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 76 that relate to Google, and refers to the applicable statutory provision(s) for the

complete and accurate contents thereof. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 76 relating to any other defendant and therefore denies those allegations.

**Failure to Obtain a Timely Mechanical License**

77. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 77 and therefore denies those allegations.

78. The allegations in Paragraph 78 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

79. The allegations in Paragraph 79 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

80. Google denies the allegations in Paragraph 80 and refers to the cited legislative history for the complete and accurate contents thereof.

81. Google denies the allegations in Paragraph 81 and refers to the cited legislative history for the complete and accurate contents thereof.

82. The allegations in Paragraph 82 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 82. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 82 relating to any other defendant and therefore denies those allegations.



**Importation and Exportation**

83. The allegations in Paragraph 83 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

84. The allegations in Paragraph 84 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

85. The allegations in Paragraph 85 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

86. The allegations in Paragraph 86 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 86 that relate to Google. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 86 relating to any other defendant and therefore denies those allegations.

**The Digital Music Business**

87. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 87 and therefore denies those allegations, except that Google admits upon information and belief that artists, record labels, aggregators, and digital music retailers are involved in the digital music business.

88. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 88 and therefore denies those allegations.

89. The allegations in Paragraph 89 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 89. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 89 relating to any other defendant and therefore denies those allegations.

90. Google denies the allegations relating to Google in Paragraph 90. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 90 relating to any other defendant and therefore denies those allegations.

91. Google denies the allegations in Paragraph 91 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 91 and therefore denies those allegations. Google further states that the allegations in Paragraph 91 state legal conclusions to which no response is required.

92. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 92 and therefore denies those allegations, except to admit that Google is a technology company that provides the Google Play digital store and that developed the Android operating system.

93. Google denies the allegations relating to Google in Paragraph 93. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 93 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 93 state legal conclusions to which no response is required.

94. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 94 and therefore denies those allegations, except to admit that

Orchard Enterprises NY has entered into an agreement with Google authorizing Google to offer through Google Play the digital phonorecord delivery of certain sound recordings of nondramatic musical works.

95. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 95 and therefore denies those allegations.

96. Google denies that it has engaged in copyright infringement, including but not limited to “mass copyright infringement.” Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 96 and therefore denies those allegations.

#### **The iTunes Store**

97. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97 and therefore denies those allegations, except that Google admits upon information and belief that the iTunes Store is owned by Apple.

98. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98 and therefore denies those allegations.

99. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99 and therefore denies those allegations.

100. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100 and therefore denies those allegations.

101. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 101 and therefore denies those allegations.

102. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102 and therefore denies those allegations.

103. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103 and therefore denies those allegations.

**Amazon MP3, Google Play, Zune, EMusic**

104. Google denies the allegations relating to Google in Paragraph 104. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 104 relating to any other defendant and therefore denies those allegations.

***Amazon MP3***

105. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105 and therefore denies those allegations, except that Google admits upon information and belief that Amazon MP3 is a digital music store owned by Amazon.

***Google Play***

106. Google admits that Google Play includes a digital music store, owned and operated by Google, that was originally launched as part of the Android Market as “Google Music” in November 2011. Google further admits that there are over 18 million songs available on Google Play, and that Google allows its customers to purchase music from its catalog, including by digital download and storage online. Google lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies those allegations.

***Zune and Xbox Music***

107. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107 and therefore denies those allegations, except that Google admits upon information and belief that Zune and Xbox Music are digital music stores owned by Microsoft.

***eMusic***

108. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108 and therefore denies those allegations, except that Google admits upon information and belief that eMusic.com is a digital music store owned by eMusic.

**The Aggregators**

109. Google lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 109 and therefore denies those allegations, except that Google admits upon information and belief that Orchard is one of several aggregators as described in Paragraph 109.

110. Google denies the allegations relating to Google in Paragraph 110. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 110 and therefore denies those allegations.

111. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111 and therefore denies them, except to admit that Orchard has entered into an agreement with Google authorizing Google to offer through Google Play the digital phonorecord delivery of certain sound recordings of nondramatic musical works. Google refers to the relevant agreements for the complete and accurate contents thereof.

112. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112 and therefore denies those allegations.

113. Google denies the allegations relating to Google in Paragraph 113 and refers to the agreements between Google and its content providers for the complete and accurate contents thereof. Google lacks knowledge or information sufficient to form a belief as to the truth of the

allegations relating to any other defendant or third party in Paragraph 113 and therefore denies those allegations.

114. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114 and therefore denies those allegations.

*Orchard*

115. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 115 and therefore denies those allegations, except to admit that Orchard has entered into agreements with Google authorizing Google to offer through Google Play the digital phonorecord delivery of certain sound recordings of nondramatic musical works.

116. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 116 and therefore denies those allegations.

117. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117 and therefore denies those allegations, except to admit that Orchard has entered into an agreement with Google authorizing Google to offer through Google Play the digital phonorecord delivery of certain sound recordings of nondramatic musical works. Google refers to the relevant agreements for the complete and accurate contents thereof.

118. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118 and therefore denies those allegations, except that Google admits that it receives a portion of the retail price of content sold on Google Play that is provided by Orchard, and refers to the relevant agreement between Google and Orchard for the complete and accurate contents thereof.

119. Google lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119 and therefore denies those allegations, except that Google

admits that it receives a portion of the retail price of content sold on Google Play that is provided by Orchard.

**Manner of Infringement**

120. Google denies the allegations relating to Google in Paragraph 120. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 120 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 120 state legal conclusions to which no response is required.

**Failure to License**

121. Google denies the allegations relating to Google in Paragraph 121. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 121 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 121 state legal conclusions to which no response is required.

122. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 122 and therefore denies those allegations. Google further refers to the cited SEC filings for the complete and accurate contents thereof.

123. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 123 and therefore denies those allegations.

124. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 124 and therefore denies those allegations.

125. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 125 and therefore denies those allegations.

**Pirated Recordings**

126. The allegations in Paragraph 126 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 126 relating to any other defendant and therefore denies those allegations.

127. The allegations in Paragraph 127 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

128. The allegations in Paragraph 128 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

129. The allegations in Paragraph 129 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 129 relating to any other defendant and therefore denies those allegations.

**Cleopatra and TVI**

130. Google denies the allegations in Paragraph 130 that relate to Google, except that Google admits, upon information and belief, that Cleopatra is a record label. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 130 and therefore denies those allegations.



131. Google denies the allegations in Paragraph 130 that relate to Google, except that Google admits, upon information and belief, that TVI is a record label. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 131 and therefore denies those allegations.

132. The allegations in Paragraph 132 state legal conclusions to which no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 132 and therefore denies those allegations.

133. Google denies the allegations in Paragraph 133 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 133 and therefore denies those allegations.

134. Google denies the allegations in Paragraph 134 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 134 and therefore denies those allegations. Google further states that the allegations in Paragraph 134 state legal conclusions and identify exhibits to which no response is required.

135. The allegations in Paragraph 135 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 135 and therefore denies those allegations.

136. Google denies the allegations in Paragraph 136 that relate to Google, except that Google admits that it has at one time offered for sale an album titled “Popcorn – ‘60s Cool Kids”

for \$9.49 on Google Play. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 136 and therefore denies those allegations.,.

137. Google denies the allegations in Paragraph 137 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 137 and therefore denies those allegations. Google further states that the allegations in Paragraph 137 state legal conclusions and identify exhibits to which no response is required.

138. Google denies the allegations relating to Google in Paragraph 138. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 138 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 138 state legal conclusions to which no response is required.

139. Google denies the allegations in Paragraph 139 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 139 relating to any other defendant or third party, and therefore denies those allegations. Google further states that the allegations in Paragraph 139 state legal conclusions to which no response is required.

#### **Unauthorized Importation**

140. The allegations in Paragraph 140 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 140 that relate to Google, and refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

141. The allegations in Paragraph 141 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 141 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 141 relating to any other defendant and therefore denies those allegations.

142. The allegations in Paragraph 142 state legal conclusions to which no response is required. To the extent a response is deemed required, denies the allegations relating to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 142 and therefore denies those allegations.

143. Google denies the allegations in Paragraph 143 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 143 relating to any other defendant or third party and therefore denies those allegations. Google further states that the allegations in Paragraph 143 state legal conclusions to which no response is required.

#### **The Bennett Labels**

144. The allegations in Paragraph 144 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies that Playbak Records, Taskmaster, Vantage Point, Tripswitch, and Digilogue provide sound recordings to Google to be offered as digital downloads in the Google Play store. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 144 and therefore denies those allegations.

145. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 145 and therefore denies those allegations.

146. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 146 and therefore denies those allegations.

147. The allegations in Paragraph 147 state legal conclusions to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 147 and therefore denies those allegations.

148. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 148 and therefore denies those allegations.

149. The allegations in Paragraph 149 state legal conclusions to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 149 and therefore denies those allegations.

150. The allegations in Paragraph 150 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies that Digilogue provides sound recordings to Google to be offered as digital downloads in the Google Play store. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 150 and therefore denies those allegations.

#### **The Colley Labels**

151. The allegations in Paragraph 151 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies that Magnitude Records, Zodiac 649, Sixth Right Records, Seventh Right Records, Eighth Right Records, Ninth Right Records, Tenth Right Records and 13<sup>th</sup> Right Records provide sound recordings to Google to be offered as digital downloads in the Google Play store. Google lacks sufficient knowledge and

information to form a belief as to the truth of the remaining allegations in Paragraph 151 and therefore denies those allegations.

152. The allegations in Paragraph 152 state legal conclusions to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 152 and therefore denies those allegations.

153. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 153 and therefore denies those allegations.

154. Google admits that Routenote and Believe provide sound recordings to Google to be offered as digital downloads in the Google Play store. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 154 and therefore denies those allegations.

155. The allegations in Paragraph 155 state legal conclusions to which no response is required. To the extent a response is deemed required, Google states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 155 and therefore denies those allegations.

#### **Unauthorized Exportation**

156. The allegations in Paragraph 156 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof. Google further denies the allegations in Paragraph 156 related to Google, and states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 156 relating to any other defendant and therefore denies those allegations.

157. Google denies the allegations in Paragraph 157 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 157 and therefore denies those allegations.

158. The allegations in Paragraph 158 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations that relate to Google. Google further states that it that it lacks sufficient knowledge and information to form a belief as to the truth of the remainder of the allegations in Paragraph 158 and therefore denies those allegations.

159. The allegations in Paragraph 159 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations that relate to Google. Google further states that it that it lacks sufficient knowledge and information to form a belief as to the truth of the remainder of the allegations in Paragraph 159 and therefore denies those allegations.

160. Google denies the allegations relating to Google in Paragraph 160. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 160 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 160 state legal conclusions to which no response is required.

161. Google denies the allegations relating to Google in Paragraph 161. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 161 relating to any other defendant or third party and therefore denies those allegations. Google further states that the allegations in Paragraph 161 state legal conclusions to which no response is required.

**Illegal Downloading Prior to Export**

162. The allegations in Paragraph 162 state legal conclusions to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 162. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 162 relating to any other defendant and therefore denies those allegations.

163. Google denies the allegations relating to Google in Paragraph 163. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 163 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 163 state legal conclusions to which no response is required, and refers to the applicable statutory provisions for the complete and accurate contents thereof.

164. Google denies the allegations relating to Google in Paragraph 164. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 164 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 164 state legal conclusions to which no response is required, and refers to the applicable statutory provisions for the complete and accurate contents thereof.

165. Google denies the allegations relating to Google in Paragraph 165. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 165 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 165 state legal conclusions to which no response is required.

**Late or Defective Notices**

166. Google denies the allegations relating to Google in Paragraph 166. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 166 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 166 state a legal conclusion to which no response is required, and refers to the applicable statutory provision(s) for the complete and accurate contents thereof.

167. Google denies the allegations in Paragraph 167 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 167 relating to any other defendant or third party and therefore denies those allegations. Google further states that the allegations in Paragraph 167 state legal conclusions to which no response is required.

168. The allegations in Paragraph 168 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) and authorities for the complete and accurate contents thereof.

169. Google denies the allegations relating to Google in Paragraph 169. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 169 relating to any other defendant and therefore denies those allegations. Google further states that the allegations in Paragraph 169 state a legal conclusion to which no response is required.

170. The allegations in Paragraph 170 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google refers to the applicable statutory provision(s) for the complete and accurate contents thereof.



**COUNT I**  
**(Copyright Infringement – 17 U.S.C. § 101 et seq.)**  
**(Failure to Obtain Mechanical Licenses)**

171. Google repeats and realleges each and every response set forth in the foregoing Paragraphs as if fully set forth herein.

172. The allegations in Paragraph 172 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 172 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant and therefore denies those allegations.

173. The allegations in Paragraph 173 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 173, and further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 173 and therefore denies those allegations.

174. The allegations in Paragraph 174 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 174, and further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 174 and therefore denies those allegations.

175. The allegations in Paragraph 175 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 175, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(c) or otherwise. Google further states that it lacks sufficient

knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 175 and therefore denies those allegations.

176. The allegations in Paragraph 176 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 176, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(a)-(b) or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 176 and therefore denies those allegations.

177. The allegations in Paragraph 177 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 177, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 505 or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 177 and therefore denies those allegations.

178. The allegations in Paragraph 178 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 178, and further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 178 and therefore denies those allegations.

**COUNT II**  
**(Copyright Infringement – 17 U.S.C. § 101, 602 et seq.)**  
**(Unauthorized Importation)**

179. Google repeats and realleges each and every response set forth in the foregoing Paragraphs as if fully set forth herein.

180. The allegations in Paragraph 180 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 180 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant and therefore denies those allegations.

181. The allegations in Paragraph 181 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 181. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 181 and therefore denies those allegations.

182. The allegations in Paragraph 182 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 182. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 182 and therefore denies those allegations.

183. The allegations in Paragraph 183 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 183, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(c) or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 183 and therefore denies those allegations.

184. The allegations in Paragraph 184 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to

Google in Paragraph 184, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(a)-(b) or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 184 and therefore denies those allegations.

185. The allegations in Paragraph 185 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 185, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 505 or otherwise.

186. The allegations in Paragraph 186 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 186. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 186 and therefore denies those allegations.

**COUNT III**  
**(Copyright Infringement – 17 U.S.C. § 101 et seq.)**  
**(Unauthorized Exportation)**

187. Google repeats and realleges each and every response set forth in the foregoing Paragraphs as if fully set forth herein.

188. The allegations in Paragraph 188 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 188 that relate to Google. Google lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant and therefore denies those allegations.

189. The allegations in Paragraph 189 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 189. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 189 and therefore denies those allegations.

190. The allegations in Paragraph 190 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 190. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 190 and therefore denies those allegations.

191. The allegations in Paragraph 191 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 191, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(c) or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 191 and therefore denies those allegations.

192. The allegations in Paragraph 192 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 192, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 504(a)-(b) or otherwise. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 192 and therefore denies those allegations.

193. The allegations in Paragraph 193 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations in Paragraph 193, and denies that Plaintiff or the putative class are entitled to an award of damages under 17 U.S.C. § 505 or otherwise.

194. The allegations in Paragraph 194 state a legal conclusion to which no response is required. To the extent a response is deemed required, Google denies the allegations relating to Google in Paragraph 194. Google further states that it lacks sufficient knowledge and information to form a belief as to the truth of the allegations relating to any other defendant in Paragraph 194 and therefore denies those allegations.

**ANSWER TO JURY DEMAND**

195. Google admits that Plaintiff purports to demand a jury trial. Google lacks sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 195 and therefore denies those allegations.

**ANSWER TO PRAYER FOR RELIEF**

Google denies that Plaintiff is entitled to relief against the Defendants, and requests that the Court dismiss all claims against Defendants with prejudice and order such further relief as the Court deems just and proper.

**AFFIRMATIVE DEFENSES**

Google sets forth below its affirmative defenses. Each defense is asserted as to all claims asserted against Google. By setting forth these affirmative defenses, Google does not assume the burden of proving any fact, issue or element of a claim where such burden properly belongs to Plaintiff. Google reserves the right to raise and rely upon additional affirmative defenses as the

facts and discovery in the case warrant and in response to any new or amended claims or allegations, and to amend this Answer.

As separate affirmative defenses, Google alleges as follows:

**FIRST DEFENSE**

This action is barred, in whole or in part, because the Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

This action is barred, in whole or in part, because Plaintiff and/or the putative class members lack standing to assert the claims alleged in this action.

**THIRD DEFENSE**

This action is barred, in whole or in part, because, to the extent the putative class members are covered by 17 U.S.C. § 411 and have not complied with its requirements, they lack standing to pursue the claims for relief alleged in the Complaint and cannot be members of the putative class.

**FOURTH DEFENSE**

This action is barred, in whole or in part, because, to the extent the putative class members are covered by 17 U.S.C. § 411 and have not complied with its requirements, this Court lacks subject matter jurisdiction over the claims for relief alleged on their behalf and they cannot be members of the putative class.

**FIFTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrine of estoppel.

**SIXTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrines of waiver, abandonment, and/or forfeiture.

**SEVENTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrine of laches.

**EIGHTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrines of unclean hands and/or copyright misuse.

**NINTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrine of accord and satisfaction.

**TENTH DEFENSE**

This action is barred, in whole or in part, because neither Plaintiff nor any members of the putative class have suffered any damage or injury as a result of any act or conduct by Google.

**ELEVENTH DEFENSE**

Plaintiff's damages, if any, and/or the damages of any members of the putative class, if any, were not caused, in whole or in part, by the alleged conduct of Google.

**TWELFTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, because the exploitations of the musical compositions at issue were licensed and/or authorized.



**THIRTEENTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the applicable statutes of limitation.

**FOURTEENTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, by the doctrines of acquiescence and consent.

**FIFTEENTH DEFENSE**

This action is barred, in whole or in part, because the Complaint fails to state a claim upon which any type of injunctive, temporary, or preliminary relief can be properly granted against Google.

**SIXTEENTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class for equitable relief, including claims for injunctive, temporary, or preliminary relief, are barred because Plaintiff and/or the putative class have an adequate remedy at law.

**SEVENTEENTH DEFENSE**

This action cannot be maintained as a class action because the numerosity requirement of Rule 23 of the Federal Rules of Civil Procedure is not met.

**EIGHTEENTH DEFENSE**

This action cannot be maintained as a class action because the commonality requirement of Rule 23 of the Federal Rules of Civil Procedure is not met.

**NINETEENTH DEFENSE**

This action cannot be maintained as a class action because the typicality requirement of Rule 23 of the Federal Rules of Civil Procedure is not met.

**TWENTIETH DEFENSE**

This action may not be maintained as a class action because individual issues predominate over issues common to the putative class.

**TWENTY-FIRST DEFENSE**

This action may not be maintained as a class action because the interests of the putative class members are in conflict with each other.

**TWENTY-SECOND DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, to the extent that their purported copyright registrations are invalid and/or have not been properly obtained.

**TWENTY-THIRD DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, to the extent that any of the class members' works are in the public domain.

**TWENTY-FOURTH DEFENSE**

This action is barred, in whole or in part, because, to the extent any reproduction, sale, distribution or other use of any of the musical compositions at issue in this action are found to have been infringements of the copyrights in said musical compositions, Google was not aware and had no reason to believe that its acts constituted an infringement of those copyrights.

**TWENTY-FIFTH DEFENSE**

This action is barred, in whole or in part, because Plaintiff and/or the putative class have failed to mitigate damages and have failed to exercise due diligence in an effort to mitigate their damages (to which, in any event, they are not entitled).

**TWENTY-SIXTH DEFENSE**

This action is barred, in whole or in part, because the Court lacks jurisdiction over some or all of the claims asserted by Plaintiff and/or the putative class.

**TWENTY-SEVENTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class are barred, in whole or in part, because Plaintiff's damages and/or the damages of the putative class, if any, were caused by independent, intervening and/or superseding events beyond the control of Google and unrelated to Google's conduct. Any loss, injury, or damage claimed by Plaintiff and/or the putative class was proximately caused by the Plaintiff or putative class members' own acts or omissions, forces and events unrelated to Google's alleged conduct, and/or the acts or omissions of persons or entities other than Google, over which Google has no control.

**TWENTY-EIGHTH DEFENSE**

Plaintiff's claim and/or the claim of any members of the putative class for attorneys' fees is barred because it lacks any basis in law or contract.

**TWENTY-NINTH DEFENSE**

This action is barred, in whole or in part, because, to the extent members of the putative class have not complied with 17 U.S.C. § 412, they are not entitled to recover statutory damages or attorneys' fees in connection with any of the claims for relief alleged in the Complaint, and cannot be members of the putative class.

**THIRTIETH DEFENSE**

This action is barred, in whole or in part, under the safe harbor provisions of the Digital Millennium Copyright Act, 17 U.S.C. § 512 (“DMCA”).

**THIRTY-FIRST DEFENSE**

Google is absolved from any and all liability for the wrongs alleged in the Complaint by reason of its full compliance with all statutes, regulations, or other laws in effect at the time of the conduct alleged in the Complaint.

**THIRTY-SECOND DEFENSE**

Plaintiff’s and the putative class’s claims are barred, in whole or in part, because the damages sought are too speculative and remote.

**THIRTY-THIRD DEFENSE**

The Complaint is barred, in whole or in part, by the release of the asserted claims.

**THIRTY-FOURTH DEFENSE**

The Complaint, and certification of the proposed class, are barred, in whole or in part, by the Due Process Clause of the Constitution of the United States.

**THIRTY-FIFTH DEFENSE**

Google hereby adopts and incorporates by reference any and all other affirmative defenses asserted or to be asserted by any other defendant in this proceeding to the extent that Google may share in such affirmative defenses.

**THIRTY-SIXTH DEFENSE**

Answers to each Paragraph of the Complaint are made by Google without waiving, but expressly reserving, all rights Google may have to seek relief by appropriate motions directed to the allegations in the Complaint.

**THIRTY-SEVENTH DEFENSE**

The prayer for an award of statutory damages for willful infringement in the amount of up to \$150,000 per work infringed is barred in whole or in part by the Fifth and Eighth Amendments to the United States Constitution, as such damages would constitute excessive fines in light of the compulsory license rate of \$0.091 per reproduction of musical compositions in connection with the sale and distribution of sound recordings.

**THIRTY-EIGHTH DEFENSE**

This action is not properly maintainable as a class action because a class action is not a superior means of adjudication.

**THIRTY-NINTH DEFENSE**

The claims in the Second Amended Class Action Complaint, and the certification of the putative class, violate Google's rights under the United States Constitution, including without limitation the following provisions: (a) the claims constitute an impermissible burden on interstate commerce in contravention of Article 1, Section 8 of the United States Constitution; (b) the claims violate Google's rights to Due Process under the Fourteenth Amendment of the United States Constitution; (c) the claims contravene the constitutional prohibition against vague and overbroad laws; and (d) the claims contravene freedom of speech rights under the First and Fourteenth Amendments of the United States Constitution.

**FORTIETH DEFENSE**

The Second Amended Class Action Complaint should be dismissed under Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join necessary and indispensable parties under Rule 19 of the Federal Rules of Civil Procedure.

**FORTY-FIRST DEFENSE**

Plaintiff's and the putative class's claims are barred in whole or in part because the Copyright Act does not apply extraterritorially.

Dated: June 23, 2014

**MAYER BROWN LLP**

/s/ A. John P. Mancini

A. John P. Mancini

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*Attorneys for Defendant Google Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 23, 2014, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to all counsel of record.

Dated this 23<sup>rd</sup> day of June, 2014.

/s/ A. John P. Mancini  
A. John P. Mancini